IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL N0.802 OF 2002

Sanjay Ganpat Rane,
Prisoner No.1516,
Kolhapur Central Prison,
Kalamba, Kolhapur-416 007. ...Appellant.
(Original Accused)

Versus

State of Maharashtra ...Respondent.

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Mr.R.Satyanarayanan, appointed Advocate for the Appellant.

Smt.V.R.Bhosale, APP, for the State.

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CORAM : S.B.MHASE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : JANUARY 11, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal, the appellant-original accused has challenged the judgment and order dated 5th April, 2002 passed by the learned Sessions Judge, Ratnagiri in Sessions Case No.38 of 2001. By the said judgment and order, the learned Sessions Judge, convicted the appellant under Section 302 of the IPC and sentenced him to suffer imprisonment for life.

2. The prosecution case, briefly stated, is as under :

. The appellant-original accused is son of deceased Ganpat Rane. Deceased Ganpat Rane was resident of village Talwade, Raowadi, Taluka : Rajapur, District : Ratnagiri. The appellant was not on good terms with his father i.e. deceased and two years before the incident, the appellant had beaten his father. On account of the said incident, the appellant came to be prosecuted. However, the Criminal Case came to be compromised. Even thereafter there was no change in the behaviour of the appellant. On the day of the incident i.e. on 5.11.2000, PW-1 Chandrabhaga who is the mother of the appellant saw her husband returning back home at about 10:30 a.m.. Thereafter, her husband was to come to cut paddy. However, he did not come, hence she went to the house to see what he was doing. She found that the front door of the house was locked, therefore, she entered into the house through the backdoor. She saw her husband lying in the house with

injuries on his person. Blood was oozing out of the injuries. She informed the neighbours as to what she has seen. Thereafter, her complaint came to be recorded by the Police. Thereafter, investigation commenced. The body of Ganpat was sent for post-mortem. The post-mortem revealed seven injuries on Ganpat which are as under:- (1) CLW forehead; (2) CLW left parietal region, (3) CLW left parietal region; (4) CLW occipital region; (5) CLW over occipital region; (6) CLW over occipital region; and (7) contusion right parietal region. The cause of death is given as "cardio respiratory failure due to haemorrhagic shock due to extensive injury to vital organ - brain". After completion of investigation, the chargesheet came to be filed in due course and the case came to be committed to the Court of Session.

3. The learned Sessions Judge framed the charge against the appellant under Section 302 of IPC. The appellant-accused pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. The appellant has raised a

specific defence that on the date of incident, he was not in the village and he was in Mumbai on that date. It is also the defence of the accused as revealed from the cross examination that some wild animal must have entered the house and caused injuries to Ganpat. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant, as stated in Para 1 above. Hence, this Appeal.

4. We have heard Mr.Satyanarayanan, the learned Advocate appointed for the appellant-accused and Smt.V.R.Bhosale the learned A.P.P for the State. We have also perused the evidence on record as well as the judgment and order of the learned Sessions Judge. After giving our anxious consideration to the matter, we are of the opinion that this appeal deserves to be allowed.

5. In order to prove its case, the prosecution has examined three witnesses i.e. PW-1 Chandrabhaga Ganpat Rane, PW-2 Ratnakar Motiram

Rabse, and PW-3 PSI Chavan. PW-1 Chandrabhaga is the mother of the appellant as well as wife of the deceased. She is the main witness in this case and the prosecution has mainly relied upon her evidence. PW-1 Chandrabhaga in her examination-in-chief has stated that on the day of the incident she was cutting paddy. Her husband came to the house at about 10:30 a.m.. Thereafter, her husband was to come to cut paddy However, he did not come. Hence she went to the house to see what he was doing. She found that the front door of the house was locked, therefore, she entered the house from the backdoor. She saw her husband lying in the house with injuries on his head. Blood was oozing out of the head injuries. She informed the neighbours as to what she had seen. Thereafter, her complaint came to be recorded by the Police.

6. PW-1 Chandrabhaga is not an eye witness to the incident. However, her evidence only brings out one circumstance against the accused i.e. motive. This circumstance has been brought out in the evidence of PW-1 Chandrabhaga where she has

stated that two years before the incident, the appellant has beaten her husband i.e. deceased. Thereafter, the appellant came to be arrested and prosecuted. The case came to be compromised. However, even thereafter there was no change in the behaviour of the appellant. It is pertinent to note that PW-1 Chandrabhaga in her evidence does not state any where that on the date of the incident the appellant was also in the house or in the village. Her evidence is totally silent on this aspect.

7. It may also be stated here that the prosecution has not been able to prove any recovery of articles at the instance of the appellant. A faint attempt has been made to prove that the clothes of the appellant were blood stained. As far as this aspect is concerned, the prosecution has relied on the evidence of PW-3 Investigating Officer PSI Vasant Chavan. PW-3 PSI Chavan has deposed in his examination-in-chief that ‘Khaki’ half pant (article 2) and full bush-shirt (article 3), both stained with blood, were seized under the spot panchnama (Exh.17).

However, there is no evidence on record to show that these clothes were those of the appellant. Hence, this evidence does not help the prosecution in any manner.

8. Besides the evidence of PW-1 Chandrabhaga, the prosecution has relied on the evidence of PW-2 Ratnakar Rabse to show that the appellant was present in the village on the date of incident. PW-2 Ratnakar in his examination-in-chief has deposed that on the date of incident i.e. on 5.11.2000 he was sitting in the grocery shop. At about 12:00 noon the appellant came to his shop and requested to give him Rs.50/- which he promised to return back in the evening. However, on going through the evidence of this witness, we find that a number of omissions have been brought on record. On going through the evidence of this witness and the omissions, we do not find it safe to rely on the evidence of this witness.

9. As far as the last witness i.e. PW-3 PSI Chavan is concerned, nothing clinching has been brought out in his evidence so as to incriminate

the appellant in the alleged offence.

10. It is also pertinent to note that the accused has raised the defence that some wild animal had caused the injuries to his father. Mr.Satyanaraynan has reiterated this stand and in support thereof, he has pointed out the evidence of PW-1 Chandrabhaga where she has stated that wild animals come in the village. The jungle is to the North and West of their house and there is little open space between her house and the jungle. In the present case the Doctor who conducted the post-mortem has not been examined. Looking to the injuries on the deceased and the defence taken by the accused in the light of the evidence which is on record, we find that the defence taken by the accused is a probable one.

11. After going through the entire evidence adduced by the prosecution, it is noticed that there is no direct evidence against the appellant-accused nor is there any circumstantial evidence of any nature including recovery of incriminating articles at the instance of the

appellant which could reliably connect the appellant with the offence. The only evidence brought on record, as stated earlier, is the motive on the part of the appellant to commit this offence. Motive may create a very strong suspicion but it cannot take the place of proof. The evidence on record, especially that of PW-1 Chandrabhaga, only points out a needle of suspicion towards the appellant. However, suspicion, however strong, cannot take place of legal proof.

12. In the present case, as far as motive is concerned, on going through the entire evidence we find that there was no proximate reason for the appellant-accused to have committed the offence. No witness, including PW-1 Chandrabhaga, says that after the incident which had occurred between the appellant and the deceased two years prior to the present incident, thereafter any specific incident had occurred in between the appellant and the deceased. PW-1 Chandrabhaga does not say that a few days before the incident, or even a few weeks before the incident, any incident has taken place

in between the appellant and the deceased. The incident on which reliance is placed to show motive was a incident which took place two years prior to the present incident and the said incident, it appears, was also of a minor nature involving beating/assault. The said incident was also compromised. In such a case, in our view, it does not appear that there was any proximate motive for the appellant to have committed the offence. As observed earlier, there was no other evidence which implicates the appellant in any manner in the offence. In a case of circumstantial evidence in the absence of any corroborative evidence, motive alone is not sufficient to convict the accused. It has been so held in the case of **Chet Ram Vs. State** reported in **1997 CR.LJ-1029**.

13. In the case of **Mohindar Singh and Anr. Vs. State of Punjab and Ors.,** reported in **AIR 2003 SC 4399**, in paragraph 10 the Supreme Court observed that where the motive of the offence was stated to be taking revenge of the attack which took place two years back, but, during this intervening

period there was no evidence on record to show any such incident or occasion where the accused had tried to take revenge; the prosecution failed to come out with any specific reason why the accused planned such a brutal attack nor it showed any proximate cause. In this background the Supreme Court held that the motive suggested was very weak and stale. The Supreme Court further observed that even otherwise, in such a case motive would be only a link evidence. The situation in the present case is similar. No untoward incident has been brought on record after the earlier incident which had occurred more than two years ago. It does not appeal to reason that after keeping quiet for two years, suddenly the accused decided to murder the deceased.

14. No doubt, motive plays an important role in a case of circumstantial evidence, but, when there is no other evidence at all which points out an incriminating finger towards the accused and the only aspect which remains is motive, we find it difficult to confirm the conviction only on the basis of motive.

15. In this view of the matter, the appeal is allowed. The judgment and order of conviction and sentence dated 5th April, 2002 passed by the learned Sessions Judge, Ratnagiri in Sessions Case No.38 of 2001 is set aside. The appellant- Sanjay Ganpat Rane is acquitted of the offence punishable under Section 302 of IPC. He be set at liberty forthwith if not required in any other case.

(SMT.V.K.TAHILRAMANI,J) **(S.B.MHASE,J.)**